

# TEXAS LAWYER

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## LITIGATION —2013— DEPARTMENTS OF THE YEAR

FINALIST ■ GENERAL-LARGE FIRM

### Locke Lord Maps Winning Positions

By Mary Alice Robbins

Locke Lord represented parties in three of the four cases that the Texas Supreme Court decided on June 21, winning two of them for their clients.

“We do handle cutting-edge issues,” Dallas partner John McDonald, co-chairman of Locke Lord’s litigation department, says of his firm’s work.

In September 2012, a Locke Lord team led by Dallas partner J. Clint Schumacher convinced the 5th U.S. Circuit Court of Appeals to affirm an approximately \$20 million judgment favoring the firm’s clients, family-owned Peak Energy Corp., Richard Coe and members of his family, in *Coe, et al. v. Chesapeake Exploration LLC*. The team also carved out a new area of Texas Statute of Frauds precedent when the 5th Circuit agreed with the district court that

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describing property with maps generated by global positioning system-enabled computerized mapping software could satisfy well-worn property description standards.

The plaintiffs alleged in their suit against Chesapeake that the company violated a July 2008 agreement with them by abandoning a deal to buy deep rights held by Peak in certain oil and gas leases in Harrison County. Chesapeake, which backed out of the deal after natural gas prices fell in 2008, argued that the agreement was unenforceable under the statute of frauds because it did not adequately identify the properties to be conveyed.

The 5th Circuit concluded in *Coe* that the agreement is enforceable under the statute of frauds. According to the 5th Circuit’s opinion, the district court found that a map attached to the agreement had been generated by Chesapeake using the GPS-generated mapping software.

Schumacher, who represented the *Coe* plaintiffs at trial as well as in the appeal, says Locke Lord deposed a Chesapeake employee

who projected the map on a wall. By using the software, one could determine the exact coordinates of a specific piece of property, he says.

The energy industry paid a lot of attention to *Coe*, Schumacher says, because the use of maps to identify and describe property is becoming more prevalent.

Pierce & O’Neill partner Jesse Pierce of Houston, Chesapeake’s attorney, says the Locke Lord attorneys involved in *Coe* were very good.

“They just did a thorough, workmanlike job,” Pierce says.

Charles “Skip” Watson, an Austin partner in Locke Lord, led a team representing oil and gas operator Wendell Reeder in an appeal of an almost \$1 million damages award against him in *Reeder v. Wood County Energy LLC et. al.* Locke Lord’s involvement in the case began when it reached the Texas Supreme Court.

The trial court in *Reeder* instructed the jury that to find a breach of the joint operating agreement (JOA) between the operator





Front row, from left: Elizabeth Mack, W. Scott Hastings, Thomas (Tom) Yoxall, Jason Sanders, Michael (Mike) Powell, Charles “Skip” Watson. Back row, from left: Ed DeYoung, David Harrell Jr., Craig Weinstock, Karin Torgerson, Paul Coggins, John McDonald, J. Clint Schumacher

and the working interest owners of the well the operator must have committed gross negligence or willful misconduct. The agreement was based on a 1989 American Association of Professional Landmen (AAPL) form JOA. The jury found the operator had breached the contract and awarded damages to the working interest owners.

Tyler’s 12th Court of Appeals affirmed the trial court’s judgment against Reeder but held that the gross negligence and willful misconduct instruction should not have been included in the jury charge because the exculpatory clause did not apply in a case about breach of contract.

In an Aug. 31, 2012, decision favoring

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Reeder, the Supreme Court unanimously held that the exculpatory clause in the AAPL’s 1989 model form agreement exempts an operator from liability for its activities unless the operator’s conduct amounts to gross negligence or willful misconduct.

Under a line of Texas court opinions based on earlier versions of the AAPL model form, courts of appeals had been requiring a lower standard of care: whether an operator failed to perform as a reasonably prudent operator. Those decisions allowed non-operating parties to pursue breach of contract claims against an operator arising from non-operation related conduct without having to show gross negligence or willful misconduct. The Supreme Court found in *Reeder* that the 1989 form of the JOA broadened the protection for operators to include activities not limited to operations. The court also reversed the damages award against Reeder.

Longview solo Bill Gardner, Reeder’s trial counsel, says the Locke Lord team “did an outstanding job” in getting the Supreme Court to recognize that the exculpatory clause in the 1989 JOA form extends the meaning of activities to go beyond field operations and covers that type of exposure.

“It offers significant protection to oil and gas operators,” Gardner says.

Mary Alice Robbins is an Austin freelance writer and former senior reporter with *Texas Lawyer*.

## Locke Lord

### BY THE NUMBERS

	Firm-wide	Texas
Department size (headcount)	293	156
Department as percent of firm (headcount)	45%	24%
Department as percent of firm (revenue)	34%	N/A